

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ETHERIC NETWORKS, INC.)	File Nos. 0005475092, 0005474180
)	
Petition for Reconsideration of Pending)	
Termination of Licenses for Stations WQQR937)	
and WQOG821)	
)	

ORDER ON RECONSIDERATION

Adopted: November 19, 2014

Released: November 20, 2014

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we dismiss as untimely a petition for reconsideration of our placement into termination pending status¹ of paths for Microwave Industrial/Business Pool stations in California.

II. BACKGROUND

2. On February 20, 2013, the Wireless Telecommunications Bureau (Bureau) issued Etheric Networks, Inc. (Etheric) a license for Microwave Industrial/Business Pool Station WQQR937.² On February 21, 2013, the Bureau issued Etheric a modified license for Microwave Industrial/Business Pool Station WQOG821 to add Path 2 with Frequency 19620.00 MHz.³

3. The original deadline for constructing the Licenses was August 20, 2014 for Station WQQR937 and August 21, 2014 for Path 2 for Station WQOG821.⁴ On May 20, 2014, the Bureau sent Etheric construction/coverage reminder letters for both Licenses WQQR937 and WQOG821.⁵ On

¹ When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in “termination pending” status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to “terminated” as of the buildout deadline. See Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006).

² See File Nos. 0005475092 (filed Nov. 2, 2012, granted Feb. 20, 2013).

³ See File Nos. 0005474180 (filed Nov. 1, 2012, granted Feb. 21, 2013).

⁴ See File Nos. 0005475092 and 0005474180 (granted Feb. 20 and 21, 2013). Certain frequencies associated with these call signs were modified and therefore received new construction deadlines. See File Nos. 0006345041 and 0006345126 (filed June 26, 2014, granted July 11, 2014). Because those frequencies received a different construction deadline, they were not placed in termination pending status.

⁵ Construct/Coverage Reminders, Ref. Nos. 5793255, 5793256 (May 20, 2014).

September 24, 2014, license auto-termination letters were sent⁶ for both Licenses and the Licenses entered termination pending status. Accordingly, on the same days, the Bureau provided public notice of the pending license terminations.⁷ On October 29, 2014, Etheric filed petitions for reconsideration of the placement of the Licenses into termination pending status.⁸

III. DISCUSSION

4. Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action.⁹ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹⁰ Since public notice of the impending license termination was given on September 24, 2014, pursuant to Section 1.4(b)(4) of the Commission's Rules, the first day to be counted in computing the thirty-day period was September 25, 2014. The last day for filing a petition for reconsideration was October 24, 2014.

5. We received Etheric's Petitions on October 29, 2014. Therefore, we find that the Petitions were filed late. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,¹¹ except where "extraordinary circumstances indicate that justice would thus be served."¹² We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹³ We do not believe that Etheric has shown such extraordinary circumstances to be present here. Indeed, Etheric has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petitions as late-filed.

6. If Etheric wishes to continue operating the terminated facilities, it must file a completed Form 601, in accordance with all applicable Commission rules, to reauthorize the facilities. In the interim, Etheric should file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's rules, if it wishes to continue operating the facilities.

⁶ Auto Termination letters, Ref. Nos. 5871390, 5871391 (Sep. 24, 2014).

⁷ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 9919, *Public Notice* (Sep. 24, 2014) at 7.

⁸ Petitions for Reconsideration, Etheric Networks, Inc. (filed Oct 29, 2014) (Petitions).

⁹ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹⁰ 47 C.F.R. § 1.4.

¹¹ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹² *Gardner v. FCC*, 530 F.2d at 1091.

¹³ See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909 (1975).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petitions for reconsideration filed by Etheric Networks, Inc. on October 29, 2014 ARE DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



John J. Schauble
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